IMPROVING MICHIGAN'S AIR PERMIT PROGRAM

A Review of Best Practices from Selected States

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Michigan Chamber Foundation

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FOREWORD

Over the last several months there has been a lot of discussion about ways to make Michigan's business environment more competitive. Within this discussion, both the Governor and legislative leaders have announced their support for streamlining the regulatory process and shortening permit issuance times.

In January 2004, in the "State of the State" address, Governor Granholm spelled out her support for reducing the time it takes to receive a permit. She said, "I am pleased to say that Steve Chester, Director of our Department of Environmental Quality is piloting a new air quality permitting process that will cut from 18 months to less than 6 months the amount of time it takes to get an air permit. I've told them: If it's clean, let's build it!"

In February 2004, House Speaker Rick Johnson and Senate Majority Leader Ken Sikkema announced JOBS II, an initiative to create new job opportunities, protect existing jobs, and promote a friendlier and healthier business climate in Michigan. Majority Leader Sikkema stated that Michigan "has a whole host of burdensome state regulations that are hampering economic growth." Speaker Johnson went on to say, "The Legislature must take the measures necessary that will help business grow the economy and create jobs."

This study, entitled *Improving Michigan's Air Permit Program*, offers strategies and recommendations to help streamline the air permit process. The first half of the study offers innovative approaches used by other states to issue permits. The second half provides specific ideas on how to improve Michigan's air permit program.

This study, commissioned by the Michigan Chamber Foundation, is designed to serve as a resource for policymakers considering improvements to the air permit process. The study offers recommendations such as establishing permit times in statute, allowing the state to use contract employees, and adopting Federal air quality standards. If adopted these recommendations would help streamline the permit process without reducing public health or environmental protection.

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About the Author

Russell J. Harding is senior environmental policy analyst for the Mackinac Center for Public Policy. Immediately prior to joining the Mackinac Center, Harding was senior director for environment and energy affairs with Scofes, Kindsvatter & Associates, and a consulting firm with offices in Lansing. He served as Michigan Department of Environmental Quality (DEQ) director from 1995 through 2002, following senior management posts in environmental and natural resources for the states of Arizona, Alaska and Missouri.

About the Michigan Chamber Foundation

The Michigan Chamber Foundation is a 501(c)(3) non-profit organization established to plan, promote and conduct non-partisan educational research and programs regarding issues facing Michigan including, but not limited to, taxation, government regulation, health care, hazardous waste, crime, tourism and recreation, welfare, government spending and transportation.

I. EXECUTIVE SUMMARY

The state regulatory climate is a major consideration for businesses wishing to either expand or locate their operations in Michigan. Both the timeliness and certainty of obtaining an air permit to construct is often a key consideration by companies deciding if they will invest in Michigan.

An often heard complaint during my tenure as director of the Michigan Department of Environmental Quality (MDEQ) was that it took longer to get an air permit to construct in Michigan than it did in many other states. Businesses with operations in other states believe that Michigan's air permitting program is more complex, with additional requirements not found in other states' air programs. The purpose of this study is to identify best practices from other states that can be used to improve Michigan's air permit program.

States operate national clean air permitting authority under delegation from the United States Environmental Protection Agency (USEPA). However, even with standard national requirements states vary considerably on how they operate their air permitting programs. Most states have invested in various strategies designed to expedite the issuance of air permits. This is hardly surprising since states are in direct competition with other states as well as other countries to attract and keep high paying manufacturing jobs.

Innovative approaches to air permitting are being instituted in many states. The following are just a few examples:

- **Ohio –** Writes rules that serve as air permits for some sources.
- **Oklahoma** – Conducts a pre-application conference that assists businesses in obtaining air permits.
- **New Jersey –** Operates an electronic air permit application process.
- **North Carolina** – Provides for allowing construction to begin before obtaining an air permit for some sources.
- **Tennessee** – Provides assistance to permit applicants through the University of Tennessee Center For Industrial Services.
- **Illinois** – Prepared a *Business Guide to Air Pollution Control Permits.* The publication is available electronically.
- **Wisconsin** – Produces a *Performance Report* on how long they take to process permits.

Michigan has done a good job in adopting practices that have expedited the processing of the less complex permits. However, MDEQ should now concentrate on streamlining the process to deal with the more complex permits. Expediting complex permits is especially important because those are the permits often associated with manufacturing operations that produce many high paying jobs. Adoption of the following recommendations will streamline the air permitting program in Michigan, allowing the state to meet expedited times frames for issuing permits. This can be achieved without sacrificing environmental protection.

The following recommendations would help in expediting air permits:

1. Legislatively-Mandate Permit Time Frames – There is a direct correlation between the absence of permit backlogs and the presence of laws requiring permits to be issued within a specified time. States with mandated time frames process even the most complex permits more quickly. The MDEQ has administrative rules that address this issue. However, those rules are not effective because they do not provide the necessary sanctions if the agency does not comply.

2. Provide For Contracting To Private Sector – It is not necessary that state employees perform all aspects of the permit review process. It is appropriate that the final decision on the permit be made by state officials. This approach has benefits for both the permit applicant as well as the state.

3. Streamline Toxics Program – Michigan's air toxic program is not required by the federal Clean Air Act or USEPA. The Clean Air Act requires USEPA to develop performance standards to reduce emission of 188 Hazardous Air Pollutants from industry using Maximum Available Control Technology (MACT). Replacing the Michigan air toxics program with the federal MACT standards will not reduce public health or environmental protection, but it will make Michigan more competitive with other states in the time required to process air permits.

4. Increase Number of General Permits – A general permit is prepared by the agency for a particular type of emission source. Once the permit is issued it can be used by applicants that meet the criteria covered by the general permit. MDEQ has done a good job in issuing general permits. However, more should be done to build on this success as general permits are both efficient and effective.

5. Adopt New Source Review Changes Proposed by USEPA – The USEPA has proposed a number of changes to the New Source Review air permitting program. It is important that Michigan support and adopt these changes if it becomes an authorized state.

6. Prepare and Distribute a Report Card on Time Frames for Issuing Air Permits – A report card on length of time required to issue air permits should be prepared and made available to the public on a quarterly basis. If the agency is required to report on the timeliness of issuing air permits they are much more likely to pay attention to the issue.

It is important that Michigan continues to improve the air permitting process. Protecting the environment and issuing permits on a timely basis are not mutually exclusive. In fact, Michigan's economic future dictates that we do both.

II. INTRODUCTION

The state regulatory climate is a major consideration for businesses wishing to either expand or locate their operations in Michigan. How quickly and with what certainty a business can obtain legally required permits defines the level to which a state is considered "business-friendly." This has become an increasingly important factor as we have moved into a global economy. Michigan business is confronted with growing competition for producing its goods and services from other states as well as other countries.

Environmental permits are often the most difficult permits for a business to obtain in a timely manner. Air permits affect manufacturing and utilities more than other environmental permits. The primary reason for this is that a business with air emissions must obtain a permit before it can operate. The smallest operational changes require new air permits for currently permitted facilities.

During the late 1980s and early 1990s, the Michigan Department of Natural Resources (MDNR) had a permit backlog of over 1,000 permits. Companies could expect to wait 18 months or more to obtain an air permit. A concerted effort was made by MDNR to eliminate the backlog and expedite the process. The state, in partnership with the private sector, implemented a number of changes that resulted in elimination of the problem. Since that effort in the early 1990s, more complexity has crept back into the air permitting process.

This paper examines the air permitting system in Michigan compared with other competing states. Innovative approaches used by other states are examined for their usefulness in Michigan. Recommendations are made as to how Michigan can expedite its air permitting process and provide more regulatory certainty to the business community without sacrificing environmental protection.

There are two major types of air permits. Permits to install and permits to operate. This paper focuses on permits to install. Air permits to install are the most crucial for Michigan businesses as they cannot expand an existing operation or start a new one without them.

States implement national clean air permitting authority under delegation from the United States Environmental Protection Agency (USEPA). There are certain national requirements that states must meet in order to receive and maintain the delegation. Even though the basic air permitting process is the same, there is a great deal of variation in how states manage the air permitting program. Timelines of issuing permits is an issue in most states. State environmental agencies and state legislatures have developed a number of innovative approaches for dealing with the issue.

This study contains descriptions of innovative approaches used by other states in their air permit to install programs. Most states are significantly changing their permitting programs to reflect changes made by USEPA in its new source review program. These changes will help clarify, and to some degree simplify, the national requirements for obtaining an air permit to install. Michigan, like other states, is in the process of making these changes.

III. BEST PRACTICES

The following section provides best practices identified from key competitor states of Michigan. States in EPA Region V were chosen because of their proximity to Michigan and similar environmental rules structure. Other states were chosen because, like Michigan, they are heavily dependent on manufacturing activity. Michigan is often in competition with these states for retention and attraction of jobs.

Ohio

Ohio EPA formed an Air Permit Efficiency Committee in July 2001 with the goal of improving the process of issuing air permits. It was a collaborative effort between Ohio EPA, USEPA and members of several business and trade associations.

The Ohio process involved a detailed review of the efficiency of the state air permitting process as well as recommendations to improve permitting efficiency.

Areas covered include:

1. Permit by Rule
2. General Permits
3. Exemption Thresholds
4. Plant-wide Applicability Limits

Permit by Rule

Ohio is developing language for permit by rule for:

- Auto body shops
- Storage tanks
- Gasoline service stations
- Printing facilities
- Gas-fired boilers up to 100 MMBTU/hour

General Permits

Ohio estimates that 20 percent of the current permit-to-install could be issued through a General Permit. They are developing General Permits for the following activities:

- Aggregate processing
- Concrete batch plants
- Asphalt processing
- Industrial painting operations
- Dry cleaners

Oklahoma – Pre-application conference

Oklahoma encourages the use of pre-application conference. This meeting occurs prior to filing an application. Permit staff are available to answer questions that the applicant might have.

New Jersey

General Permits

General Permits are available for the following categories:

- Bulk solid materials receiving and storage systems
- Confined abrasive blasting equipment
- Woodworking equipment
- Storage and transfer of service station fuels at gasoline dispensing facilities
- Emergency generator
- Boiler less than 10 million BTU/hour
- Boilers and heaters individually less than 10 million BTU/hour
- Stationary non-floating roof storage tanks storing volatile organic compounds
- Site remediation activities for gasoline contamination at vehicle fueling stations

Remote AIMS Data Input User System (RADIUS)

RADIUS is a computer application which allows users to electronically prepare and submit pre-construction and Title V operating permit applications, modifications and amendments, as well as prepare yearly emission statements.

North Carolina

Construction of an air emission source

The North Carolina legislature has initiated legislation that defines the construction activity that is permitted prior to obtaining an air permit. This does not apply to Prevention of Significant Deterioration (PSD) permits.

New Permits

1. Clearing and grading
2. Construction of access roads, driveways, and parking lots.
3. Construction and installation of underground pipe work; including water, sewer, electric, and telecommunication utilities.
4. Construction of ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment associated air cleaning device for which a permit is required.

Permitted Facilities

A permit holder may alter or expand the physical arrangement or operation of an air containment source, equipment, or associated air cleaning device at a permitted facility. The altered source may not be operated until a permit is issued.

- Boilers
- Paved and unpaved roadways
- Storage piles

Tennessee

Tennessee provides assistance to permit applicants through the University of Tennessee Center For Industrial Services. The Tennessee Department of Environment and Conservation also provides Environmental coordinators for new applicants that need more than one permit.

Under Tennessee state law, a construction permit for a minor source must be issued within 115 days after receipt of a complete application. For major sources, the permit is to be issued within six months after receipt of a complete application.

Illinois

As a result of the Governor's Small Business Environmental Task Force, the State of Illinois has prepared a Business Guide to Air Pollution Control Permits. The publication is available electronically and is a joint effort of the Illinois Environmental Protection Agency and the Illinois Department of Commerce and Community Affairs. The guide is well done and is a particularly good tool for small and medium businesses that require an air permit.

Indiana

The Indiana Department of Environmental Management (IDEM) has initiated a process, utilizing stakeholders, for New Source Review (NSR) reform. The focus of this effort is to conform with changes to the NSR program under taken by the United States Environmental Protection Agency (USEPA). The following are some of the key issues being addressed by IDEM.

- Applicability Test
- Clean Unit Designation
- Pollution Control
- Plant-wide Applicability Limitations

Minnesota – Expedited Permit

The MPCA's Expedited Permit Program was introduced in the fall of 1994 to help alleviate permit backlogs. Authorized by the Minnesota Legislature during its 1994 session, the program provides for expedited permit reviews by means of staff overtime or by the use of a contractor to the MPCA. Use of the program was originally reserved for construction or modification projects, and only then when an applicant's reasonable schedule could not be met due to existing MPCA workload. However, in 2001, legislation was passed that allowed for the expansion of the program to include other reviews, such as review and approval of performance test reports, environmental review, and the issuance of operating permits required by enforcement action.

Program Limitations and Expectations

This program relies heavily on well-written, complete reports or permit applications. Applications that deviate from MPCA policies, Minnesota rules, federal regulations, are poorly organized, or do not completely address applicable requirements, will most likely result in time delays and cost increases further into the review process. Not all projects are good candidates for the expedited permit program. Projects with the potential to become controversial require staff from many areas of the MPCA to work on them, or to have difficult to meet deadlines are best not handled using this program. If your application is found to be incomplete, it may be returned to you, or you will be asked to submit additional information. At that point, processing will cease until deficiencies are addressed.

Reimbursements to the MPCA for costs incurred under the program must precede issuance of a permit action or report approval. Such reimbursements cannot affect in any way the MPCA's decisions regarding a report's approval or the review/issuance/denial of a permit or affect the type of conditions that a proposed permit contains.

Any action undertaken through the program must comply with applicable state and federal statutes and rules. The program will not and cannot be used to circumvent requirements of any environmental program. The program cannot perform complicated review functions in a fraction of the time normally required to complete them; the program's main benefit is to allow work to begin on an application or report immediately, as opposed to waiting in a queue for several weeks or months.

Applicants are responsible for completing Environmental Review requirements (Environmental Assessment Worksheet or Environmental Impact Statement) on a separate track. Any public notice period(s) required by Environmental Review must be at least half completed before an associated air emission permit public notice period can begin.

Wisconsin – Regulatory Performance Report

Wisconsin Department of Natural Resources (WDNR) produces a Performance Report on how long the WDNR takes to process nine different types of permits. "Air Permits to Install" are included in the performance report.

IV. RECOMMENDATIONS

Manufacturing cannot remain competitive and survive in Michigan without certainty in the permitting process. Michigan businesses must be able to rely on timely processing of their permit applications. Predictability of outcome is also essential in order for business to undertake successful financial planning. In other words, if a permit applicant complies with permitting requirements they should be able to rely on receiving their permit. Without process certainty it is difficult if not impossible for firms doing business in Michigan to remain competitive in a global marketplace. Figure 1 compares various states performance in issuing air permits to install.

Figure 1
STATE AIR PERMIT SUMMARY

State	Avg. Length of Time to Issue Major Permits	Private Contracting Allowed	Statutory Time Requirement	Backlog	Expedited Permit Process
Louisiana	6-18 months	No	Yes, 210 days after admin. complete	Yes	Yes
West Virginia	6 months	No	6 months after admin. complete	No	Yes
Texas	9 months	Yes	No	Yes (603)	Yes
North Carolina	6 months	No	Yes, 3 months after admin. complete	No	Yes
Virginia	3 months	N/A	Yes, 3 months	No	No
Ohio	90%, complete with 6 months	N/A	6 months, 2-month extension for public hearing	N/A	Yes
Minnesota	N/A	Yes	18 months	N/A	Yes
Tennessee	6 months	N/A	6 months from admin. complete. Entire process cannot exceed one year.	No	No
Wisconsin	3 months	N/A	Yes, 205 working days	N/A	No
Michigan	4 months	No	Yes, 10 days; Admin. complete; 120 days after admin. complete for entire process.	No	No

Pilot programs to address the timelines of permit issuance should be avoided. Pilot programs are a short-term response to a long-term problem. They only address the symptoms of the problem and not the root causes. A successful permit reform effort must address structural problems in the permit process system.

Michigan has done a good job in adopting practices that have expedited the processing of the less complex permits. However, MDEQ should now concentrate on streamlining the

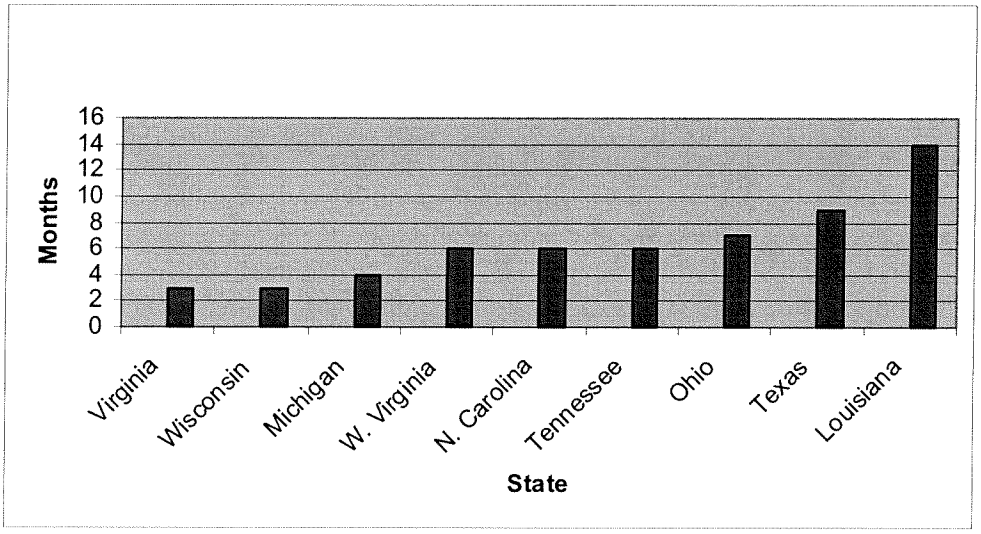
process to deal with the more complex permits. Expediting complex permits is especially important because those are the permits often associated with manufacturing operations that produce many high paying jobs. Adoption of the following recommendations will streamline the air permitting program in Michigan, allowing the state to meet expedited time frames for issuing permits. This can be achieved without sacrificing environmental protection.

1. Legislatively-Mandate Permit Time Frames – MAJOR PERMITS: 30 days for a completeness review, six months to complete permit adjudication. MINOR PERMITS: 15 days for a completeness review, 115 days to complete permit adjudication.

   There is a direct correlation between the absence of permit backlogs and the presence of laws requiring permits to be issued within a specified time frame. States that are required to make permit decisions within a statutorily mandated time frame somehow figure out how to get the job done. While the timeframes differ between states, the outcomes in the air permit process conform to these prescribed timeframes (see Figure 1). The MDEQ has administrative rules that address this issue. However those rules are not effective because they do not provide the necessary sanctions if the agency does not comply.

   MDEQ does a good job with the average time it takes to issue air permits (See Figure 2). However, the agency needs to reduce the amount of time it takes to adjudicate the more complex applications. These permits are often the most important in providing new jobs and economic growth. This is the primary reason that a statutory maximum timeframe to review permits should be established.

Figure 2
AVERAGE LENGTH OF TIME TO ISSUE PERMITS



The permit adjudication process is segmented into two distinct phases.

A. Administratively Complete Application Review – This phase involves a review of permit applications to ensure they contain the necessary information to allow the agency to process the permit. MDEQ should be required to complete their review within 30 days of receipt of the application for major permits and 15 days for minor permits. See below.

COMPLETENESS REVIEW – MAJOR SOURCE

Within 30 days after the director or his agent or authorized representative receives an application for an air permit to install for a major source (over 100 tons per year of a regulated air contaminant) or an application to modify such a permit, the director shall determine whether the application is substantially complete or materially deficient and shall notify the applicant, in writing, of the determination. If the agency fails to make the completeness determination required above within the 30-day period, the application shall be deemed complete. A completeness determination triggers timelines for permit issuance, retroactive to the date the complete application was received by the agency, but does not limit the agency's ability to request additional information.

The completeness review may be conducted by a private contractor that has been pre-qualified by the MDEQ as competent to conduct the review.

If, within the time prescribed above, the director or his agent or authorized representative determines that an application is deficient, the director shall return the application to the applicant. The running time ceases at the time the determination is made. If the applicant subsequently re-submits the application to the director, the time shall resume running at the time the application is re-submitted.

COMPLETENESS REVIEW – MINOR SOURCE

Within 15 days after the director or his agent or authorized representative receives an application for an air permit to install for a minor source (less than 100 tons per year of a regulated air contaminant) or an application to modify such a permit, the director shall determine whether the application is substantially complete or materially deficient and shall notify the applicant, in writing, of the determination. If the agency fails to make the completeness determination required above within the 15 day period the applicant shall be deemed complete. A completeness determination triggers timelines for permit issuance retroactive to the date the complete application was received by the agency, but does not limit the agency's ability to request additional information.

B. Final Application Review – Phase two involves processing the completed permit application and rendering a final agency decision. Included in this phase is holding a public hearing, if necessary. The timeframe on this phase of the process should begin once an administratively complete application is received.

The MDEQ should be required to complete this phase within six months for major permits and 115 days for minor permits. (See below.)

PERMIT DECISION TIME LIMITS – MAJOR SOURCE

The director shall issue or deny a permit to install or modification of such a permit within 180 days after the date that the application for the permit or modification was determined to be complete.

Upon the written request of the applicant, the director, in writing, may extend the time provided for issuing or denying the permit or modification for the additional time specified in the applicant's request for the extension.

Upon completion of the administrative completeness review a conference shall be held between MDEQ and the permit applicant. One of the following two actions will be undertaken. A) The MDEQ will in writing issue a performance guarantee to the permit applicant that the permit will be processed within the timeframe stated above or B) If due to workload or other extenuating circumstances such a performance guarantee can not be granted by MDEQ the permit applicant will be allowed to assign the permit processing to a private contractor that has been pre-qualified by the MDEQ as competent to conduct the review.

Upon completion of the private contractor review the director shall have 30 days to approve or disapprove the permit. If the director does not complete the final permit review within 30 days the permit is deemed approved.

PERMIT DECISION TIME LIMITS – MINOR SOURCE

The director shall issue or deny a permit to install or modification of such a permit within 115 days after the date the application for the permit or modification was determined to be complete.

Upon the written request of the applicant, the director, in writing, may extend the time provided for issuing or denying the permit or modification for the additional time specified in the applicant's request for the extension.

Upon completion of the administrative completeness review one of the following two actions will be undertaken: A) The MDEQ will in writing issue a performance guarantee to the permit applicant that the permit will be processed within the timeframe stated above or B) If do to workload or other extenuating circumstances such a performance guarantee can not be granted by MDEQ the permit applicant will be allowed to assign the permit processing to a private contractor that has been pre-qualified by the MDEQ as competent to conduct the review.

Upon completion of the private contractor review the director shall have 15 days to approve or disapprove the permit. If the director does not complete the final permit review within 15 days the permit is deemed approved.

The completeness review shall be conducted by a private contractor that has been pre-qualified by the MDEQ as competent to conduct the review.

> If, within the time prescribed above, the director or his agent or authorized representative determines that an application is materially deficient, the director shall return the application to the applicant. The running time ceases at the time the determination is made. If the applicant subsequently re-submits the application to the director, the time shall resume running at the time the application is re-submitted.

Providing for these statutory timeframes is the single most important action the state can take to address timeliness in issuing of air permits.

2. Provide For Contracting To Private Sector – It is not necessary that state employees perform all aspects of the permit review process. It is appropriate that the final decision on the permit be made by state officials. Both permit applicants and the state benefit from a private sector permit review option.

   A private contracting option could be employed for both phases of the permit process. A review for administrative completeness is particularly well-suited to the use of private contractors. In fact, the state successfully employed this approach in the early 1990s to deal with the large backlog of air permits.

   The second phase of the permit review process also would benefit from the use of private contractors. There are potential conflict of interest issues. However, these issues could be addressed by maintaining a pool of independent contractors that prepare the permits but do not do other work for the permit applicant.

   There are several benefits to allowing the use of private contractors in the processing of air permits:

   A. Frees up scarce state resources to do final review, conduct public hearings and perform other administrative tasks.
   B. Provides "high-tech" private sector jobs that help grow Michigan's economy.
   C. Saves the state money that would be needed to hire additional personal.
   D. Provides much needed flexibility. The state does not have to increase the number of permanent employees for temporary increases in the number of permits that have to be processed.

3. Streamline Toxics Program – Michigan's air toxics program is not required by the federal Clean Air Act or USEPA. The Clean Air Act requires USEPA to develop performance standards to reduce emission of 188 Hazardous Air Pollutants from industry using Maximum Available Control Technology (MACT). At one time the air toxic program in Michigan made sense because USEPA had not completed MACT standards for industrial sources of air pollution. However, the new federal MACT standards make the Michigan air toxics program redundant and ineffective. The air toxic program in Michigan requires case-by-case technology reviews at the time of permit application adding considerable complexity, uncertainty, cost, and time to obtain permit approval. The air toxics program is an unnecessary and major obstacle to a competitive permit process. Importantly, other states competing with Michigan for business do not have similar programs. Replacing the Michigan air toxics program with the federal MACT

standards will not reduce public health or environmental protection, but it will make Michigan more competitive with other states in the time required to process air permits.

4. Increase Number of General Permits – MDEQ has issued the following permits:
   - Anhydrous ammonia storage and handling
   - Propane or natural gas-fired boiler
   - Natural gas-fired burnoff ovens
   - Coating lines emitting up to 10 tons per year of VOCs
   - Nonmetallic mineral crushing facilities
   - Groundwater and soil remediation processes for petroleum products
   - Diesel fuel-fired engine generators
   - Ethylene oxide sterilizers

   A general permit is prepared by the agency for a particular type of emission source. Once the general permit is issued it can be used by applicants that meet the criteria covered by the general permit. This requires additional time for MDEQ staff initially but saves both the state and the regulated community considerable time in the future as new permits do not need to be individually processed. MDEG has done a good job in issuing general permits. However, more should be done to build on this success as general permits are both efficient and effective. (See Figure 3.)

Figure 3
GENERAL PERMITS ISSUED BY OTHER STATES

Type	State
Aggregate Processing	Ohio
Concrete Batch Plants	Ohio, Texas
Asphalt Plants	Ohio, Indiana, Texas, Oklahoma
Industrial Painting Operations	Ohio
Dry Cleaners	Ohio, Oklahoma
Paved and Unpaved Roads	Ohio
Storage Piles	Ohio
Bulk Solid Materials and Storage Systems	New Jersey
Confined Abrasive Blasting Equipment	New Jersey
Woodworking Equipment	New Jersey
Storage and Transfer of Service of Service Station Fuels at Gasoline Dispensing Facilities	New Jersey
Emergency Generator	New Jersey
Stationary Non-Floating Roof Storage Tanks	New Jersey
State Remediation Activities	New Jersey
Contamination at Vehicle Fueling Stations	New Jersey
Pollution Control Projects	Texas
Municipal Solid Waste Landfills	Texas
Electric Generating Units	Texas
Temporary Rock Crushes	Texas
Chromium Electroplating and Anodizing	Oklahoma
Halogenated Solvent Degreasing	Oklahoma
Printing or Packaging	Oklahoma

5. Adopt New Source Review Changes Proposed By USEPA – The USEPA has proposed a number of changes to the New Source Review air permitting program. It is important that Michigan support and adopt these changes if it becomes an authorized state. Michigan is currently a delegated state and is required to adopt the changes. A more detailed explanation of these changes is included in the Best Practices section of this report under Indiana. The USEPA changes provide more certainty to the regulated community. The changes to the New Source Review program also provide additional flexibility to business.

6. Prepare and Distribute a Report Card on Time Frames for Issuing Air Permits – A report card on length of time required to issue air permits should be prepared and made available to the public on a quarterly basis. Such a report card was done by previous administrations. Another good example of this type of report is included in the Best Practices section of this study under Wisconsin.

V. CONCLUSION

A number of factors contributing to job losses are out of the direct control of the state. However, the regulatory climate of the state is one factor that is controlled by Michigan government.

Pilot programs and other temporary fixes will not provide sustainable improvements to the air permitting program. The recommendations outlined in this report offer a menu of choices that would provide meaningful long-term reforms to Michigan's air permit process.

IMPROVING MICHIGAN'S AIR PERMIT PROGRAM

The following is a point-by-point discussion of the issues raised by Steve Chester, Director of the Michigan Department of Environmental Quality in his response on July 7, 2004 to the Michigan Chamber Foundation report "*Improving Michigan's Air Permit Program—A Review of Best Practices from Selected States.*"

➢**CHAMBER RECOMMENDATION**: Legislatively-Mandated Permit Time Frames – MAJOR PERMITS: 30 days for a completeness review, six months to complete permit adjudication. MINOR PERMITS: 15 days for a completeness review, 115 days to complete permit adjudication.

Summary of DEQ Response: Existing DEQ rules generally require the AQD to act on an application within 60 days from the date an application is technically complete, or 120 days when public comment is required. For the 200 permits issued by the AQD from January 1 through May 12, 2004, the average length of time from the technically complete date to permit issuance is 49 days. For the 11 permits that required public comment, this time frame averaged 103 days. Both are well below the 60- and 120-day deadlines specified in the existing rules as well as in the Foundation's report. In fact, last year the AQD met the deadlines *over 95 percent of the time.* As noteworthy as these achievements are, the DEQ continuously seeks to improve the air use permitting program. Efforts are presently underway to identify and eliminate root causes of delay and waste. Two innovations the AQD recently announced are the Promoting Leadership in Environmental Decision-Making to Grow our Economy (PLEDGE) pilot permit program, and the redesigned permitting process that will become effective in September 2004.

Chamber Response: The Michigan Chamber believes the statutory mandating of permit time frames has several important benefits:

- MDEQ would be required to issue permits in a timely manner irrespective of workload. Although the agency is issuing permits more quickly, there are fewer permits to process than during a time of economic expansion. When the workload increases the time the agency needs to adjudicate permits will also likely increase-leading to permit backlogs.
- All permits would have to be processed within a mandated time frame. The average length of time to issue permits is not as important as insuring that all permits are processed in a timely manner. The most complex permits, which take the most time to process, are often the most important to a company and the most important for increased economic activity in the state.
- Pilot programs such as Promoting Leadership in Environmental Decision-Making to Grow our Economy (PLEDGE) do not provide long term regulatory certainty. The commitment to a pilot program may change with a change in administration. Statutory changes generally transcend changes in administrations.

➢**CHAMBER RECOMMENDATION:** Provide For Contracting To Private Sector – It is not necessary that state employees perform all aspects of the permit review process. It is appropriate that the final decision on the permit be made by state officials. Both permit applicants and the state benefit from a private sector permit review option.

Summary of DEQ Response: The Foundation recommends that private sector contractors be used to perform some aspects of the permit review process. Given the efficiency and effectiveness of the AQD staff, the use of outside contractors is certainly not warranted from either a need or cost savings standpoint. Moreover, the underlying assumption that third-party contractors can always do work more efficiently and at less cost than state public servants is specious. By way of example, a recent internal DEQ review has confirmed that the DEQ's laboratory can actually provide comprehensive analytical services at a cost far below those of private labs, and do so more efficiently to boot.

Chamber Response: In your response you state that the private sector may not be able to do the work at a cost savings. You also maintain that the Air Quality Division (AQD) staff is both effective and efficient. We believe your response misses an important point.

Michigan businesses should have the opportunity to utilize private contractors if permits can not be guaranteed within the mandated time frames. The use of private contractors has several significant advantages for both the Department and Michigan business.

- It is very difficult if not impossible for the agency to quickly respond to changing work loads. The agency must seek additional funding from the legislature, a time consuming and difficult process, to hire new employees during peak workload periods. If the agency is successful in persuading the legislature to fund new employees, those employees must then be trained. The air permitting program is a very complex one and requires that employees have considerably training and experience. Once employees have been successfully hired and trained it is equally difficult to lay them off when workload decreases. Other strategies that have been employed by MDEQ such as paying overtime have not been effective.
- The use of private contractors should not be viewed by MDEQ employees as a threat to their job security. MDEQ management should understand that private contractors can provide additional resources, especially during periods of heavy workload.
- Private contractors are businesses that pay taxes and provide high paying jobs for Michigan workers. The Michigan Chamber has already been contacted by a firm that provides air permitting services in other states such as Nebraska, Minnesota, and Indiana- they are anxious to have an opportunity compete for this work. In addition, there are several qualified firms in Michigan that could fill this specialized niche in the marketplace.

➢**CHAMBER RECOMMENDATION**: Toxics Program Should Be Streamlined: Replacing the Michigan air toxics program with the federal MACT standards will not reduce public health or environmental protection, but it will make Michigan more competitive with other states in the time required to process air permits.

Summary of DEQ Response: Replacing Michigan's air toxics program with the federal MACT standard would reduce public health and environmental protection for the simple reason that the MACT standards are ***not designed to ensure adequate protection of human health and the environment***. The federal air toxics program is strictly based on applying a control technology standard without regard to what health and environmental effects will exist after application of that standard. Any residual health risks remaining after application of the MACT standards are intended to be addressed by the residual risk program required under Section 112(f) of the federal Clean Air Act (CAA). The federal CAA requires that the residual risk standards be promulgated within eight years after the MACT standard. To date, the United States Environmental Protection Agency (USEPA) has not proposed a single residual risk standard.

Lastly, it should be noted that because Michigan's air toxics program is complimentary to the federal program and covers those toxic air pollutants and sources not covered under the federal program, it addresses many of the concerns that citizens have regarding emissions of air toxics from new or modified sources in their neighborhoods. The public has come to expect and deserves this comprehensive assessment to assure that their health and the environment are not being impacted by emissions of toxic air pollutants. Without the Michigan air toxics program, the tools would not be available to provide this assurance.

Chamber Response: MDEQ maintains in your response that the air toxics program is not redundant with federal Maximum Achievable Control Technology (MACT) standards. You also claim that reform of the air toxics program would result in reducing public health protection.

The Clean Air Act requires EPA to identify industrial or "source" categories that emit one or more of the listed 188 toxic air pollutants (HAPs). For major sources within each category, the Clean Air Act requires EPA to develop national standards that restrict emissions to levels consistent with the lowest emitting plants. Theses air toxics control standards are based on what is referred to as "maximum achievable control technology," or MACT. This year, the EPA has finalized all of the listed MACT standards. Additionally, the Clean Air Act directs EPA to evaluate the "residual risk" that may remain following implementation of the MACTs, and develop further regulations if, and where the risk is unacceptable.

The Michigan Air Toxics Program can create significant delays and contradictions in the permitting process for little or no additional environmental protection. The federal MACT standards are comprehensive and are utilized by other state environmental agencies and the U.S Environmental Protection Agency (USEPA) throughout the country to protect public health. In Michigan it is not uncommon for AQD staff through the air toxics program to require businesses to address theoretical problems when there is not even the smallest chance of exposure to the public.

➢**CHAMBER RECOMMENDATION**: <u>Increase Number of General Permits</u>. A general permit is prepared by the agency for a particular type of emission source. Once the general permit is issued it can be used by applicants that meet the criteria covered by the general permit. This requires more MDEQ staff time initially but saves both the state and the regulated community considerable time in the future as new permits do not need to be individually processed. Other states have issued general permits for many sources that Michigan has not covered under a general permit. MDEQ should

issue many more general permits. This will save staff time in the long run. Perhaps this time could be used to write general permits.

Summary of DEQ Response: A general permit is prepared and issued by the AQD for a specific type of source. Each general permit lists criteria that must be met in order to qualify for the general permit. Applicants meeting the criteria submit an application and a permit is issued usually within a week. The Foundation noted that the AQD has issued a number of general permits, but that more should be done to build on this success. A list of general permits issued by other states was included. Suggestions have been provided as best practices by other states.

Currently, there are eight general permits for a variety of sources. Since 1999, there has been an average of 55 general permits issued per year. The AQD continues to review potential candidates and develop general permits where it is appropriate.

Chamber Response: The MDEQ maintains in your response that many general permits are available to permit applicants. The Michigan Chamber agrees that MDEQ has done a good job in developing general permits. Our intent was not to criticize the MDEQ but rather to offer a list of suggestions that could be good candidates for general permits (See Page 16 of report). We believe, in the long run general permits are a much more efficient use of valuable AQD staff time, as they reduce the number of individual permits that must be processed by AQD staff.

➢**CHAMBER RECOMMENDATION**: Adopt New Source Review Changes Proposed By USEPA – The USEPA has proposed a number of changes to the New Source Review air permitting program. It is important that Michigan support and adopt these changes. A more detailed explanation of these changes is included in the Best Practices section of this report under Indiana. The USEPA changes provide more certainty to the regulated community. The changes to the New Source Review program also provide additional flexibility to business.

Summary of DEQ Response: As one of a handful of states delegated the federal New Source Review (NSR) Reforms promulgated on December 31, 2002, Michigan has taken a national leadership role in the implementation and education of NSR Reforms. We are also in the process of developing our own state rules that incorporate some of the federal NSR Reforms promulgated on December 31, 2002. This includes pursuing approval for our own PSD program with the recent reforms in our State Implementation Plan. The reforms will also be made part of the state's current nonattainment permitting rules. The stakeholder process for the development of these rules began in March 2004. The AQD is on a six-month rule development schedule including a public hearing, which is a very ambitious schedule. The rules are projected to go into effect in April 2005.

Chamber Response: In your response you point that MDEQ has been a national leader in reforms of the federal New Source Review (NSR). The Michigan Chamber appreciates your leadership on this important issue. You also indicated that you are "in the process of developing your own state rules that incorporate some of the federal NSR Reforms promulgated on December 31, 2002".... Our concern is that you are only adopting some of the changes. We believe the NSR Reform package taken as a whole provides much needed regulatory reform for a program that MDEQ has admitted is badly in need of reform. We urge you to adopt all of the federal reforms including the "Equipment Replacement Provision". If MDEQ deviates from the

approach utilized by USEPA the results will be more confusion and uncertainty in air permitting, especially for Michigan companies that do business in other states.

➢**CHAMBER RECOMMENDATION**: Prepare and Distribute a Report Card on Time Frames for Issuing Air Permits – A report card on length of time required to issue air permits should be prepared and made available to the public on a quarterly basis. Such a report card was done by previous administrations. Another good example of this type of report is included in the Best Practices section of this study under Wisconsin.

Summary of DEQ Response: The Foundation recommends that a report card on the length of time required to issue air permits be prepared and made available to the public on a quarterly basis. For Michigan, a series of current and historical statistics or "a report card" continues to be available and updated quarterly on the AQD Permits Web site at http://www.deq.state.mi.us/aps/ under Permit Statistics.

Chamber Response: The Michigan Chamber applauds the DEQ for providing critical information related to air permits on your website. However, for the purposes of investment and planning job providers must know the maximum amount of time it takes the DEQ to process a completed permit application. This important piece of data is currently missing from your report card. We hope you will be supportive of our efforts to have maximum permit times inserted in the reporting language required annually under section 324.5522 of the Natural Resources and Environmental Protection Act.